IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 4

ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL.,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION OF ILLINOIS COMMERCE COMMISSION, ET AL., FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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INDEX.

PAGE

ARGUMENT:

I. The Federal District Court Lacked Jurisdiction Over This Complaint Because of the "Johnson Act Amendment" to the Judicial Code. Even Apart from the Provisions of that Amendment and If Jurisdiction Technically Existed, Its Exercise Should Have Been Forborne.... 12

II. Even If Federal Equity Has No Jurisdiction, This Court May Decide the Case Upon the Merits Adversely to Respondent; and This Is True Even Though It May Not Decide the Case Favorably to It..... 15

III. There Is No Repugnancy Between the Federal Warehouse Act and the Law of Illinois..... 17

IV. There Is No Repugnancy Between the Commodity Exchange Act and the Law of Illinois..... 25

Appendix I 41

Appendix II 43

Appendix III 57

Appendix IV 75

Conclusion 40

Prayer for certiorari..... 8

Reasons relied upon for the allowance of the writ... 7

Statement of the case..... 9

Statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review 6

Summary and short statement of the matters involved 1

The jurisdictional questions..... 6

The questions presented..... 5

The substantive questions..... 5

Cases Cited.

Atchison Ry. v. Railroad Comm., 283 U.S. 380..... 34
Atlantic Coast Line v. Georgia, 234 U.S. 280..... 34
Anderson National Bank v. Luckett, 321 U.S. 233.... 36
Allen-Bradley Local v. Wisconsin Emp. R. Bd., 315 U.S. 740 36
Carey v. South Dakota, 250 U. S. 118..... 32
Colegrove v. Green, 66 S. Ct. 1198..... 16
Corn Products Refining Co. v. Eddy et al., 249 U.S. 427 32
Cloverleaf Butter Co. v. Patterson, 315 U.S. 148..... 37
Dickson v. Uhlmann Grain Co., 288 U.S. 188.....26, 33
Hartford Indemnity Co. v. Illinois, 208 U.S. 155..... 33
Illinois Central RR. Co. v. Com., 245 U.S. 493..... 23
Kelly v. Washington, 302 U.S. 1..... 36
Mintz v. Baldwin, 289 U.S. 346..... 33
Merchants Exchange of St. Louis v. Missouri, 248 U.S. 365 32
Maurer v. Hamilton, 309 U.S. 598..... 35
Minnesota ex rel. Whipple v. Martinson, 256 U.S. 41.. 36
Missouri Pacific R. Co. v. Norwood, 283 U.S. 249.... 34
Natural Gas Pipeline Co. v. Slattery, 302 U.S. 300.. 14
Northwestern Bell Tel. Co. v. Nebraska, 297 U.S. 471.. 23
Pacific States Co. v. White, 296 U.S. 176..... 33
Parker v. Brown, 317 U.S. 341..... 34
Peoples Gas, Light & Coke Co. v. Slattery, 373 Ill. 31.. 13
Railway Mail Association v. Corsi, 326 U.S. 88..... 22
Reid v. Colorado, 187 U.S. 137.....23, 31
Savage v. Jones, 225 U.S. 501..... 31
Sligh v. Kirkwood, 237 U.S. 52..... 32
South Carolina State Highway Dept. v. Barnwell, 303 U.S. 177 34
Sprague, et al., Trustees of Chicago Rapid Transit Co. v. Biggs, 390 Ill. 537..... 13

Southern Pacific Co. v. Arizona, 325 U.S. 761..... 35
State v. Christopher, 318 Mo. 225, 2 S.W. (2d) 621.. 27
Terminal Railroad v. Brotherhood Trainmen, 318 U.S. 1 .....23, 35
Townsend v. Yeomans, 301 U.S. 441..... 33
Union Brokerage Co. v. Jensen, et al., 322 U.S. 202..27, 36
United States v. Hastings, 296 U.S. 188..... 21
Welch Co. v. New Hampshire, 306 U.S. 79..... 35
Wood v. Broom, 287 U.S. 1..... 15

STATE STATUTES CITED.

Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a, pp. 2714-2718 (Appendix II) 7, 18, 43-54
Illinois Public Utilities Act, Ill. Rev. Stats. 1945, Ch. 111⅔, pp. 2607-2668.....7, 13, 19
Illinois Warehouse Receipts Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 233-292, pp. 2709-2714 (Appendix III) 7, 19, 57-72
Illinois Constitution of 1870, Art. XIII, Ill. Rev. Stats. 1945, p. 31 (Appendix I).....7, 17, 41-42

FEDERAL STATUTES CITED.

Johnson Act Amendment, Sec. 24 (1) Judicial Code, (Title 28, U.S.C.A. Sec. 41 (1))..... 12
United States Commodity Exchange Act, (Tit. 7, U.S.C.A. Secs. 1 et seq.).....2, 4, 25
United States Warehouse Act, as amended, (Tit. 7, U.S.C.A. Secs. 241 et seq.).....2, 20
United States Judicial Code, Sec. 240 (Title 28, U.S.C.A. Sec. 347)..... 6
United States Commodity Exchange Act, In full— (Appendix IV) 75-82

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Summary and Short Statement of the Matters Involved.

Petitioners, who are the Illinois Commerce Commission, its members, and the Attorney General of Illinois, seek two writs of *certiorari* from this court to review two judgments of the United States Circuit Court of Appeals for the Seventh Circuit in two companion cases, *Great Lakes Elevator Corporation, et. al.*, v. *Illinois Commerce Commission, et al.*, and *Board of Trade of the City of Chicago, a corporation*, v. *Illinois Commerce Commission, et al.*,

which were decided by that court in a single opinion although a separate judgment was rendered in each case.[1]

In the *Great Lakes* case the Circuit Court of Appeals, reversing a decision by Judge Igoe of the District Court for the Northern District of Illinois, held that the United States Warehouse Act, as amended,[2] so far constituted a "preemption of the field" of the regulation of grain warehouses voluntarily licensed under the federal act as to supersede Illinois constitutional provisions and Illinois statutes, cited and summarized under the statement of jurisdiction *post*, which concededly regulated such warehouses prior to the intervention of the Federal Act in question.

In the *Board of Trade* case the Circuit Court of Appeals, reversing Judge Igoe's decision in the District Court, held that the United States Commodity Exchange Act[3] similarly implied supersedure of Illinois statutory provisions which before the advent of the Commodity Exchange Act had concededly been applicable to the Chicago Board of Trade insofar as was necessary to affect the

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(1) Since the same opinion decides both cases and since some of the issues are identical while the other issues, although distinct in the two cases, are so similar and so intimately related that they must be considered comparatively, we file an identical petition and an identical brief in both cases.

Daniel F. Rice and Company, which was a co-defendant below with the instant petitioners and whose interests will hereafter appear, is presenting independent petitions for certiorari concurrently with our presentation of the instant petitions. We have been privileged to see a draft of Rice's petitions and supporting briefs and shall avoid needless duplication of statement and argument as far as possible; but we earnestly present certain contentions which Rice and Company do not press or do not conceive as we conceive them and therefore we cannot join in their petitions.

The Attorney General was not formally impleaded as a defendant in the *Board of Trade* case and so technically is not a party petitioner in that case.

(2) The United States Warehouse Act, as amended, (Tit. 7, U. S. C. A. Secs. 241 *et seq.*

(3) United States Commodity Exchange Act, (Tit. 7, U. S. C. A. Secs. 1 *et seq.*) The full text of the Act appears as Appendix IV hereto.

Board's activities incidentally to the matters concerning warehouse receipts.

Each judgment sustained a complaint to enjoin the Illinois Commerce Commission from continuing pending investigation or regulation of practices of federally licensed warehousemen although such proceedings had not culminated in any final order on the part of the Commission and although the plaintiff (respondent here) had not sought admittedly available statutory or equitable remedies in the courts of Illinois.

The subject matter of the Illinois Commission's investigation and contemplated regulation was warehouse rates, alleged discriminatory practices, the commingling of proprietors' grain with that of customers', public warehouse service and facilities, warehousemen's financing, issuance of securities and capital structure, transactions with affiliated and other utilities, and kindred matters. These activities are concededly not fully and actually regulated at the present time either by the federal act in question or by regulations promulgated under it; nor does either federal act expressly void state laws and powers.

Some of these phases of activity (*e.g.*, financing, securities and capital structure) are not even subject to the authority of the Secretary of Agriculture under any language appearing in the federal act. As to other matters, such as some aspects of service and facilities, the Secretary has authority under the Act to take administrative action that could be inconsistent with orders that the Illinois Commission might make; but no conflict of regulation has as yet arisen, so that there is only a potential and not an actually precipitated conflict between possible future state and federal directives. With respect to the very important matter of rates, the situation is (*Brief, post*) that the Secretary has *no* express author-

ity to *prescribe* rates but *does* have authority to *disapprove* rates even though they have been installed by a state commission. [Of course we concede that in the case of an actual conflict between a state order or regulation and a valid order or regulation by the Secretary of Agriculture, whether with respect to rates or other matters, the latter would prevail.]

The Commodities Exchange Act does not provide for the general and comprehensive regulation of grain exchanges. (See *Brief, post.*)

The Circuit Court of Appeals was of the view, which is challenged here, that the federal legislation in question evinces a congressional intention to supersede state regulatory process with respect to the matters indicated above, both as to activities which the Secretary may regulate but has not regulated and as to matters which he has no authority to regulate, it being that Court's view that there was an implied preemption of the field by total occupation.

The Circuit Court of Appeals also rejected the petitioners' contentions that plain, speedy and adequate remedies existed in the state courts for the vindication of any rights that the respondent (plaintiff) had, that therefore federal jurisdiction would not have been exercised even before the Johnson Act Amendment[4] to the Federal Code, and that the District Court's jurisdiction over the instant cases is specifically withdrawn by that amendment as well as petitioners' contention that even before the Johnson Act, the exercise of federal jurisdiction should have been forborne because state remedies had not been exhausted.[5]

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(4) Johnson Act, Sec. 24(1) Judicial Code (Tit. 28, USCA, Sec. 41(1) (quoted in full in the Brief, *post*, Point I).

(5) Petitioners also contended below that respondent invoked the federal constitution as nullifying state legislation and therefore a three judge court should have been convoked. But that contention is abandoned here because further study has shown it to be probably

The foregoing is deemed a sufficient "Summary and Short Statement of the Matter Involved" to indicate the nature and importance of the questions presented, which questions are stated below. The histories of the cases are more fully narrated in the brief in support of these petitions.

The Questions Presented.

The decision of jurisdictional questions must logically precede a consideration of the merits. But where jurisdiction to decide the substantive questions depends upon whether the nature of those questions is such that the court has jurisdiction to entertain them, the substantive questions must necessarily be stated first.

The Substantive Questions.

The ultimate substantive questions sought to be presented are logically inseparable and composite. They may be stated as follows:

Do the Federal Warehouse Act and the Commodity Exchange Act impliedly so far "preempt the field" of federal warehouse regulation that the Illinois Commerce Commission may no longer regulate (or even investigate with a view to regulation) federally licensed warehouses with respect to rates, alleged or actual discriminatory practices, the commingling of proprietors' grain with that of customers', service and facilities, securities, financing and capital structure, transactions with other utilities and similar matters, and may no longer approve or disapprove rules or regulations of the Chicago Board of Trade affecting federally licensed warehouses?

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not well conceived and in any event, now that the Circuit Court of Appeals has decided the case, nothing would be gained by insisting, even successfully, upon a remandment to the lower court only to bring this case before this court at a later date.

Dependent upon the ultimate issues stated above and directly implicit in them is a more specific but very important question that may be stated as follows:

Certain provisions under the Federal Warehouse Act and fully discussed in Rice & Company's brief provide in effect that *if* federally licensed warehousemen issue negotiable warehouse receipts for grain owned by them and stored in their warehouses, such warehouse receipts shall conform to certain regulations. But neither the federal act nor federal regulations promulgated thereunder expressly authorize federal licensees to store their own grain in their own warehouses or issue receipts therefor under any circumstances or conditions at all. The practice is legal in some states but illegal under the constitution of Illinois. Do the federal regulations which prescribe only *how* such receipts shall be issued *if* they may be issued legally under state laws intend by implication that such receipts *may be issued under federal authority notwithstanding state prohibition?*

The Jurisdictional Questions.

The jurisdictional questions are:

Inasmuch as it was conceded that adequate remedies existed at law or in equity in the state courts, was federal equitable jurisdiction inhibited by the Johnson Amendment to the Judicial Code?

Even apart from the Johnson Act, should equity have forborne the exercise of jurisdiction because state remedies were not resorted to?

Statement Particularly Disclosing the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review.

This court's jurisdiction is invoked under Section 240 of the United States Judicial Code (Title 28, U. S. C. A.,

Sec. 347). The validity of Illinois constitutional provisions and statutes in the presence of federal statutes as applicable to the facts in the instant cases is involved.

The federal statutes involved are the United States Warehouse Act, the Federal Commodity Exchange Act and those provisions of the Judicial Code granting, recognizing and limiting the jurisdiction of district courts (*Cited Ante*). The state constitutional provisions involved are Article XIII of the Illinois Constitution, which is wholly devoted to warehouses. The state statutes involved are the Illinois Public Utilities Act, the Illinois Grain Warehouse Act, the Illinois Warehouse Receipts Act. Official citations of these acts appear in the margin[6] with references to appendices to this petition in which some of the shorter acts are quoted in full. The Illinois Public Utilities Act empowers the Illinois Commission to regulate rates, services, facilities, financing and inter-utility transactions. See Brief, *post*, where its provisions are summarized to the extent necessary for argument and decision of the substantive issues if there is jurisdiction to decide them at all in these cases.

Reasons Relied Upon for the Allowance of the Writ.

The reasons relied upon as sufficient to invoke this court's writs of *certiorari* are that these cases present very important questions which have not been but should be decided by this court and that although the questions presented are of first impression here, nevertheless the decisions of the Circuit Court of Appeals are probably in

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(6) Illinois Constitution of 1870, Art. XIII, Ill. Rev. Stats. 1945, p. 31. (Appendix I.) This constitutional provision has been held to prohibit the commingling of grain owned by a warehouseman with grain owned by his customers. *Hannah* v. *People*, 198 Ill. 77.
Illinois Public Utilities Act, Ill. Stats. 1945, Ch. 111 2/3, pp. 2607-2668.
Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a, pp. 2714-2718. (Appendix II.)
Illinois Warehouse Receipts Act, Ch. 114, pars. 233-292, pp. 2709-2714. (Appendix III.)

conflict with the teachings of this court's decisions most nearly in point. (See *Brief*, Points III and IV, *post.*).

Comment in emphasis of the great moment of the issues presented appears to be unnecessary but will be found in the separate petitions and briefs of Rice and Company.

The Circuit Court of Appeals, quoting averments from respondent Board of Trade's complaint, said:

> "The grain market at Chicago is the world's largest grain market. * * * Over 90% of the trade in grain futures contracts in the United States was transacted at the said market on the said Board of Trade, * * *." (*Great Lakes case*, Tr. 108; *Board of Trade case*, Tr. 244.)

The probable conflict between the decisions under review and this court's applicable decisions will appear from the brief in support of this petition and from the brief in support of Rice and Company's petition in the *Great Lakes* case.

Prayer for Certiorari.

Wherefore, petitioners pray that this court grant its writ of *certiorari* to review the judgment of the Circuit Court of Appeals in the case in which this petition is entitled.

ILLINOIS COMMERCE COMMISSION and JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE, and VAL J. WASHINGTON, members of said Commission,

Petitioners.

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BRIEF IN SUPPORT OF THE FOREGOING PETITION.

STATEMENT OF THE CASE.

Daniel F. Rice & Company is a grain commission partnership and is a co-petitioner by separate applications for *certiorari* in these cases.

On July 28, 1944, Rice & Company filed a complaint with the Illinois Commerce Commission against public grain warehousemen in the Chicago terminal area. Because of Illinois statutory provisions, which confer jurisdiction upon the commission over rules and regulations of the Chicago Board of Trade insofar as such rules and regulations apply to warehousemen, the Board of Trade was joined as a party.

This petition charged the warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating with inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions, and with violation of an Illinois constitutional requirement forbidding warehousemen to store and issue receipts against their own grain in their own warehouses. It prayed an investigation in the premises and the entry of orders which would fix just and non-discriminatory rates, would eliminate discriminatory practices with respect to commingling of grain, would forbid arbitrarily preferential grain transactions, and would prohibit the manipulation and rebating of grain storage charges, preferential allocation of storage space, discriminatory delaying of the loading out of customers' grain to further the sale of the warehousemen's own grain, and similar unfair activities.

The petition further prayed administrative action which would insure reasonable, adequate and safe service and facilities. It also invoked the commission's state statutory jurisdiction over warehousemen's issuance of securities, financial operations and contracts with other utilities. (*Petition of Rice & Co. to Illinois Com. Com., Great Lakes* case, Tr. 16-24; *Board of Trade* case, Tr. 10-19.)

Motions to dismiss the proceedings were filed with the commission (*Great Lakes* case, Tr. 25-26; *Board of Trade* case, Tr. 20-24) and were denied (*Great Lakes* case, Tr. 27-28; *Board of Trade* case, Tr. 6.)

Thereupon several of the warehousemen who are licensed under the Federal Warehouse Act filed their complaint in the *Great Lakes* case in the District Court for the Northern District of Illinois (*Great Lakes* case, Tr. 2-15). The Board of Trade also filed its separate complaint in that court (*Board of Trade* case, Tr. 3-9).

Petitioners filed motions to dismiss in the nature of demurrers in each case (*Great Lakes* case, Tr. 40-42; *Board of Trade* case, Tr. 214-216), challenging the jurisdiction of federal equity because respondents had not resorted to admittedly available state statutory equitable remedies and, on the merits, resisting respondents' contentions that the federal legislation in question superseded Illinois constitutional, statutory and administrative authority in the premises.

The District Court overruled respondents' jurisdictional contentions but sustained their substantive contentions, held in each case, that there was no repugnance between state and federal law and dismissed both cases. (*Great Lakes* case, Tr. 88-93; *Board of Trade* case, Tr. 220-225.)

Respondents appealed to the Circuit Court of Appeals for the Seventh Circuit. In that court Rice & Company,

having won a victory on the merits and presumably not having the same interest that the Illinois Commission and the Attorney General have as a matter of policy in questions of federal equity jurisdiction over state agencies, failed to join the instant petitioners in their renewal in the Circuit Court of Appeals of the jurisdictional contentions. The instant petitioners reasserted in that court the contention that federal equity jurisdiction did not exist or that its exercise should have been forborne because admittedly adequate state remedies were not exhausted. Both Rice & Company and the instant petitioners argued that, if the District Court had jurisdiction to decide the case at all, its decision on the merits that state regulation had not been superseded was correct and should be affirmed. As has been indicated in the opinion, *ante*, the Circuit Court of Appeals sustained the District Court's jurisdiction but, also sustaining respondents' contention that federal acts in question superseded state authority, reversed the District Court on the merits.

These petitions for *certiorari*, as well as the companion petitions by Rice & Company, follow.

The facts pertinent to the question as to repugnancy of state and federal legislation, insofar as those facts appear in the pleadings or are properly the subject of judicial notice, are more appropriately considered in the Argument.

ARGUMENT.

I.

The Federal District Court Lacked Jurisdiction Over this Complaint Because of the "Johnson Act Amendment" to the Judicial Code. Even Apart From the Provisions of That Amendment and If Jurisdiction Technically Existed, Its Exercise Should Have Been Forborne.

Section 24(1) of the Judicial Code (Title 28 U.S.C.A., Section 41(1)) was amended in 1934 by the act known as the Johnson Amendment. It now provides as follows:

> "• • • Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any ratemaking body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing **and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state.** * * *" (Emphasis supplied.)

The commission proceedings which this suit seeks to enjoin involve "rates chargeable by a public utility" and the order initiating such proceedings has been made "after reasonable notice and hearing." The proceedings being

merely investigatory, they do not interfere with interstate commerce.

There can be no doubt that plain, speedy, adequate and efficient remedies exist in the courts of Illinois.

Section 68 of the Illinois Public Utilities Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 72), the pertinent provisions of which are quoted in the margin,[7] confers statutory power on the circuit and superior courts of Illinois to review administrative actions of the Illinois Commerce Commission.

Section 70 of the Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 74) provides that such statutory proceedings for review "shall have priority in hearing and determination over all other civil proceedings pending in such court, excepting election contests." Section 71 of the Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 75) provides that such court "may stay or suspend, in whole or in part, the operation of the Commission's rule, regulation, order or decision."

Thus there is an expeditious and adequate statutory mode of review. But in the rare case where this review might not be adequate or efficient to prevent confiscation, denial of due process or other serious injury, utilities have the classical remedy in equity by temporary and permanent injunction.

In *Peoples Gas, Light & Coke Co.* v. *Slattery*, 373 Ill. 31; and in *Sprague, et al., Trustees of Chicago Rapid Transit*

(7) "Within thirty days after the service of any order or decision of the Commission refusing an application for a rehearing of any rule, regulation, order or decision of the Commission, or within thirty days after the service of any final order or decision of the Commission upon and after a rehearing of any rule, regulation, order or decision of the Commission, any person or corporation affected by such rule, regulation, order or decision, may appeal to the circuit or superior court of the county in which the subject-matter of the hearing is situated, or if the subject-matter of the hearing is situated in more than one county, then of any one of such counties, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined. • • •."

Co. v. *Biggs,* 390 Ill. 537, the Supreme Court of Illinois held that the statutory review could not supersede the general equitable remedy of injunction in view of the provisions, not only of the Illinois and federal due process clauses, but of Section 12 of Article VI of the Illinois Constitution of 1870. That provision confers "original jurisdiction" in all law and equity cases upon circuit and superior courts. In the *Peoples Gas Co.* case, cited above, the court said that in Illinois "The legislature cannot validly limit those powers" (*i.e.,* the constitutional plenary powers of equity inherited from English chancery). In other words, in addition to a statutory remedy which must take precedence over all cases except election contest cases, respondents had a right under the Illinois constitution to *exactly the type of equitable remedy which they sought in the federal courts.*

There being no doubt that the instant cases were "suits to enjoin, suspend or restrain the enforcement, operation or execution of" an "order of administrative board or commission of a state" which "affects rights chargeable by a public utility," interstate commerce not being involved by a mere investigation, and there being no question that "a plain, speedy and efficient remedy may be had at law or in equity" in the courts of Illinois, this proceeding was categorically, peremptorily and absolutely interdicted by the Johnson Act.

This appears to be so plain and so simple that we do not argue the point further.

But even before the Johnson Act, this court specifically held that a utility had no right to invoke federal equity to prevent a mere investigation by a state commission. In *Natural Gas Pipeline Co.* v. *Slattery,* 302 U. S. 300, this court, speaking through Mr. Justice Stone, held, even

before the Johnson Act, that a public utility had no right to enjoin the Illinois Commerce Commission from an investigation of its accounts, *even though it was charged the utility was not subject to the Illinois Commission's jurisdiction in any respect and that submission to the investigation would unconstitutionally interfere with interstate commerce and afflict it with grave and irreparable injury.*

In view of the positive diction and unmistakable meaning of the Johnson Act, which inhibits federal equity suits affecting public utility rates where "a plain, speedy and efficient remedy may be had at law or in equity" in the state courts, the instant petitioners earnestly insist, notwithstanding the holding of the District Court and the Circuit Court of Appeals, that those courts were without jurisdiction to entertain this case or decide it upon the merits or should have forborne the exercise of jurisdiction.

II.

Even If Federal Equity Has No Jurisdiction, This Court May Decide the Case Upon the Merits Adversely to Respondent; and This Is True Even Though It May Not Decide the Case Favorably to It.

Of course, this court need not decide the substantive question of repugnancy if it accedes to the instant petitioners' contention, urged under Point I, *ante*, that the Johnson Act inhibits jurisdiction of these cases. But even if this court sustains that contention or does not pass upon it, there is precedent in this court's decisions for pronouncement of a decision on the merits *provided that such decision is adverse to the plaintiff.*

In *Wood* v. *Broom*, 287 U. S. 1, this court had occasion to consider a suit asserting rights under an act of Congress

and seeking to restrain a congressional election. The defendants contended both that federal equity was without jurisdiction and that the plaintiffs' cause rested upon a misconception, pertinent to the substantive merits and not pertinent to jurisdiction, concerning the intent of Congress with respect to congressional elections. A majority of this court held that since they agreed with the defendants that the plaintiffs had no substantive rights, they would not pass upon the question of whether, had such rights existed, equity would have been impotent to vindicate them because of lack of jurisdiction. Thus the Court decided the substantive question adversely to the plaintiffs although it recognized a jurisdictional question that it declined to decide.

Following this decision, Mr. Justice Frankfurter's opinion in the case of *Colegrove* v. *Green*, 66 S. Ct. 1198, held that federal equity was powerless to enforce rights claimed by certain Illinois electors but also held that they had no such rights as they claimed. In other words, in *Wood* v. *Broom* a majority of the court, and in *Colegrove* v. *Green* a majority of the justices concurring in the court's judgment, held that jurisdictional questions need not be reached where it appears that even if jurisdiction existed, the plaintiffs do not have the substantive rights that they claim.

But the converse is obviously not true. A court may *refuse* relief as well for lack of substantive merit as for jurisdiction. But before it may *grant* relief, not only must the case possess merit warranting such relief but jurisdiction to grant it must likewise exist.

In short, this court may, consistently with its precedents, reverse the Circuit Court of Appeals either because (A) it holds that the lower courts had no jurisdiction and therefore this court will not pass on the merits, (B) be-

cause it holds that respondent's contentions are without substantive merit and therefore need not consider the jurisdictional question, or (C) both because, as a majority of the justices concurring in opinion held in the *Colegrove* case, the lower courts had no jurisdiction and because there is no substantive merit in respondents' contention. But in order to affirm the Circuit Court of Appeals, it must decide both that the lower courts had jurisdiction and that respondents are right upon the merits.

III.

There Is No Repugnancy Between the Federal Warehouse Act and the Law of Illinois.

Before citing and arguing the intendment of this court's decisions which we deem most incisively pertinent in this case, we briefly consider, without argument other than that implied by terms of comparison and contrast, the federal and state laws involved.

COMPARISON AND CONTRAST OF THE SCOPE AND SUBSTANCE OF THE STATE AND FEDERAL LAWS IN QUESTION.

Grain warehousemen are subject to comprehensive regulation under Illinois constitutional and statutory provisions.

The whole of Article XIII of the Illinois Constitution of 1870 is devoted to warehouses. Its full text is reprinted as Appendix I. After defining all elevators or storehouses where grain "is stored for a compensation, whether the property stored be kept separate or not," declaring them to be "public warehouses" (sec. 1), it provides for the posting of sworn statements as to the amount and grade of each kind of grain stored, that warehouse receipts have been issued and are outstanding, and other infor-

mation (sec. 2). It gives the holders of warehouse receipts the right "always" to examine the properties stored (sec. 3). It provides that common carriers shall weigh or measure grain on receipt for the full amount and be responsible for the delivery of such full amount (sec. 4) and contains provisions requiring railroad companies to furnish facilities to warehouses (sec. 5). It makes it the duty of the General Assembly to pass all necessary laws to prevent the issuance of false or fraudulent warehouse receipts and to give full effect of this article of the constitution, which "shall be liberally construed so as to protect producers and shippers" (sec. 6). It provides that the General Assembly "shall pass laws for the inspection of grain, protection of producers, shippers and receivers of grain and produce" (sec. 7), and that the article shall not be construed to deny the General Assembly "the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies" (sec. 6). These provisions have been construed as prohibiting the commingling of a warehouseman's own grain with that of his customers. (*Hannah* v. *People,* 198 Ill. 77.)

The Illinois Grain Warehouse Act is reproduced in full as Appendix II. (Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a.) Its provisions are summarized in the margin.[8]

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(8) After providing for the creation of local supervisory boards (secs. 2-5) it provides for official sealers who must supervise the storage of grain, ascertain the amounts stored by each owner, determine the exact grade and quality of the grain, ascertain that the "bin crib, granary or other receptable in which the grain is stored is satisfactory for the storage of grain, and that such receptable conforms to the regulations applicable thereto promulgated by the Department of Agriculture" (secs. 6, 7), and perform incidental functions prescribed by the act. Sections 12 and 13 define non-negotiable and negotiable certificates. Sections 14-19, which may be read at length in the appendix, contain provisions contended to protect the holders of such certificates against loss by destruction, deterioration or theft of grain, which is subject to such certificates. Other provisions deal with "group ownership," a device whereby several producers may pool their grain and obtain group certificates. Still other provisions have to do with the fraudulent issuance of certificates, issuing of duplicate certificates, delivery of grain while a certificate is outstanding, transfer or mortgaging of grain after issuance of securities, and application of the Warehouse Receipts Act.

The Illinois Warehouse Receipts Act is printed in full as Appendix III (Ill. Rev. Stats. 1945, Ch. 114, pars. 233-292). It is summarized in the margin.[9]

The Illinois Public Utilities Act under which the instant petitioners seek to conduct the investigation which the Circuit Court of Appeals says must be restrained, is too long to be reproduced in full. Pertinent provisions are summarized as follows:

Section 10 of the act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 10) defines as a public utility any person, including a corporation, which shall conduct a business "for the storage or warehousing of grain."

This statute gives the commission the broad regulatory powers that are usual in the case of modern administrative superintendence of state public utilities. Among the powers conferred upon the commission are those of fixing rates (sec. 41), regulating service and facilities (sec. 49), the supervising and approving of financing and issuance of securities (sec. 20), regulation of transactions with subsidiaries, affiliates and other public utilities (sec. 27), investigation (sec. 60), supervision of accounts (sec. 11), and, to speak more generally, jurisdiction over the conduct of the grain warehousing business (secs. 8-10).

No such comprehensive regulation of federally licensed

(9) This is a comprehensive warehouse receipts negotiable instrument act. After prescribing the contents of such certificates, it reenacts the provisions of the Grain Warehouse Act with respect to what certificates are non-negotiable and what certificates are negotiable (the distinction is as to whether the goods are deliverable "to the depositor or to the bearer or to the order of any person named in such receipt"). This act provides for duplicate receipts which are non-negotiable shall be so marked. It requires and authorizes the delivery of goods upon due presentation of the receipt, contains provisions imposing liability for conversion, authorizing the commingling of fungible goods and makes the ownership of such goods ratable tenants in common of the commingled mass, previous attachment or levy unless negotiable receipts are surrendered, gives a lien for storage charges, and contains provisions with respect to negotiation and transfer of receipts and the rights of mesne and ultimate holders thereof.

warehouses appears to have been envisioned by Congress in enacting the Federal Warehouse Act. In the first place, federal licensure is purely voluntary. Conceivably Congress might have intended that those who elected to comply with the federal act should thereby become immune from state regulation, thus leaving it optional with individual warehousemen to determine whether they wished to be under state or federal regulation, but such an intent would appear to be so inconsistent with any rationally conceived purpose comprehensively and fully to regulate the grain warehousing business that it should not be inferred in the absence of a clear expression, particularly when it would have been so very easy for Congress to have inserted such a provision in the Act if it had intended any such result.

As originally enacted, section 29 of the Federal Warehouse Act reads as follows:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *."

In 1931 section 29 was amended to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

The Circuit Court of Appeals divined from this change of language an implication of congressional intention to supersede all state regulatory authority. Indeed, the respondent's case was necessarily conceived upon imputing such an effect to this language, since under the original version of the Act it was expressly provided that it should not "conflict with * * * or limit the effect or operation of the laws of any state relating to warehouses."

But since petitioners contend that, as this court said in *United States* v. *Hastings*, 296 U. S. 188, 199:

> "* * * The amendment of 1931, with respect to conflict with the operation of state laws, does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act * * *,"

we continue our analysis of the federal act without argumentative comment at this point in order to ascertain to what this court must have referred when it spoke in the language above quoted of "the authority conferred by the Act."

Although the federal act does permit the Secretary of Agriculture to strike down discriminatory and unreasonable rates, it does not express any grant of authority to him to conduct hearings and fix such rates. Indeed, such authority might well be of little practical value; for he could not fix rates for non-licensed warehouses and therefore could not achieve any integrated or coherent rate pattern for the nation's warehouse utilities.

We do not depart from the task of comparative analysis of the act involved when we observe in passing that although the last fifteen years have seen an unprecedented trend toward federal price control and regulation of business, Congress has provided no machinery whereby the

Secretary of Agriculture may hold hearings such as those that have traditionally been held in the field of public utility rate making.

The Act provides for no judicial review of any rate structure that the Secretary of Agriculture might impose. Hence we conclude that it is not intended that he shall impose any such general structure. Although the trend of the times is toward more, not less, control over the financing and capitalization of business, this Act contains no provision authorizing the Secretary of Agriculture to superintend the issuance of securities or other financing operations. If federally licensed warehousemen escape state supervision of their financing, without submitting themselves to federal supervision, the result is in diametrical opposition to the entire tendency of recent congressional policy.

As pointed out in more detail in the brief of Rice & Company in support of its petition in the *Great Lakes* case, the Act confers no authority to issue general regulatory orders and directives, no requirements for the making of findings of fact by the Secretary, no legislative standards governing administrative policy, no general power to conduct hearings and no provision for rehearings or for judicial review.

A.

CANONS GENERALLY APPLICABLE TO THE QUESTION OF IMPLIED CONGRESSIONAL SUPERSEDURE OF STATE AUTHORITY.

This court said in *Railway Mail Association* v. *Corsi*, 326 U. S. 88, 97:

> "Congress must clearly manifest an intention to regulate for itself • • • before the police power of the state is powerless."

This general precept and doctrine is so well settled that we do not extensively quote authorities in support of it. They will be found at some length, however, in the brief of Rice & Company in the *Great Lakes* case. (See *Illinois Central Railroad Co.* v. *Commission*, 245 U. S. 493, and *Reid* v. *Colorado*, 187 U. S. 137, for recognition of this general principle.)

One serious fallacy that permeates the opinion of the Circuit Court of Appeals in the instant case is its view that federal authority to promulgate regulations which *may* conflict with existing or future state regulations constitutes *per se* such an exertion of congressional authority as to preempt the field in which such a potential conflict may arise.

But this court has held otherwise. In *Northwestern Bell Telephone Co.* v. *Nebraska*, 297 U. S. 471, the relevant act of Congress not only gave the Interstate Commerce Commission authority in its discretion to prescribe uniform system of accounts for telephone companies but *made it unlawful for them to keep any accounts other than those prescribed by the commission.* This court said at page 480:

> "No exertion of federal authority • • • forbids the making of entries in appellant's accounts or the doing of anything that is by the state commission's order directed to be done. Pending action by the Communications Commission establishing depreciation rates for telephone companies, state control over such rates remains unimpaired."

Another case which is cogently pertinent and which the Circuit Court of Appeals does not even cite, although petitioners relied upon it heavily in that court and as they do here, is *Terminal Railroad* v. *Brotherhood Trainmen*, 318 U. S. 1. In that case the Illinois Commerce Commission

had entered an order requiring the interstate railroad to put cabooses on interstate trains. Not only did the Interstate Commerce Commission clearly have authority to enter an order inconsistent with and superseding the Illinois order, but the court assumed without deciding "that the demand for additional caboose service and its refusal constitute dispute about working conditions and that the National Railroad Adjustment Board would have jurisdiction of it on petition of the employees or their representative." Here, then, were not one but two separate acts under either of which the federal government might have promulgated an administrative regulation in conflict with the Illinois regulation. Nevertheless the Illinois regulation was sustained.

We submit that once it is perceived that the opinion of the Circuit Court of Appeals rests upon the fallacious assumption that mere potential repugnance of administrative action is enough to evince a preemption of the field and a nullification of state acts, that opinion, notwithstanding the prestige of the experienced and distinguished court that pronounced it, should invite *certiorari* from and reversal by this court.

Another consideration that must seriously compromise the authority of the opinion now under review is the following: The scope of the investigatory and potentially regulative process of the Illinois commission in the instant case was broad and general. The Circuit Court of Appeals strips the Illinois commission of *all* regulatory authority over federally licensed warehousemen. Now it is a matter of state, not of federal, concern how Illinois bestows or distributes its police power if police power exists. How far is the Illinois commission, and therefore the State of Illinois, disabled from regulating licensed

granaries under the Circuit Court of Appeals decision? Is a federally licensed and approved warehouse subject to Illinois' fire laws? Is it subject to her zoning ordinances, or a power in the Illinois commission to consider zoning policy in approving its operation in a given manner at a given location? If securities that it desires to issue are not subject to the Commerce Commission, are they subject to the provisions of the Illinois Blue Sky Law? How far may Illinois regulate transactions between licensed and unlicensed warehousemen? (Such a question is fairly within the scope of the inquiry entertained by the commission upon the Rice petition.)

IV.

There Is No Repugnancy Between the Commodity Exchange Act and the Law of Illinois.

The federal statute seeks only to control excessive speculation upon and manipulation in commodity exchanges. (Section 3.) This control is exercised by prohibiting futures trading except where executed through registered futures commission merchants and brokers trading on boards of trade designated as contract markets by the Secretary of Agriculture. In addition, specific manipulative devices or practices which have led to excess speculation are prohibited. (Section 4-4d.) A board of trade may be designated as a contract market when there is a sufficient volume of trading in the actual commodity as well as in futures, when records are maintained, false reports and manipulation of prices are prevented, and membership is assured to co-operative associations. (Section 5.) The designated contract market is required under the statute to:

a) "Furnish" the secretary with copies of rules and regulations and changes therein. (Section 5a(1).)

b) Allow the inspection of its books by the secretary. (Section 5a(2).)

c) Require warehouses out of which deliveries can be made on futures contracts to make reports, keep records and allow "visitation" by the secretary. (Section 5a(3).)

d) Provide the delivery period, delivery notice and the grades of commodities that may be delivered on futures contracts. (Section 5a(4), (5) and (6).)

e) Require that federally licensed warehousemen be declared regular for deliveries on futures contracts "without discrimination", irrespective of the possession of state licenses, provided reasonable requirements as to accessibility and suitability are met. (Section 5a(7).)

The statute is not comprehensive in scope. It does not provide for affirmative regulation, but controls in a negative manner by prohibiting futures trading unless certain specific minimal requirements are met. The limited and circumscribed character of the Commodity Exchange Act and the underlying congressional intent were authoritatively discussed in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933). The claim was there made that a Missouri statute which declared illegal certain grain futures transactions had been superseded by the Grain Futures Act (Commodity Exchange Act before its amendment in 1936), on the ground of exclusive occupancy of the field by federal authority. In upholding state regulation, this court said at pages 198-200:

> "The Federal Act • • • does not purport to validate any dealings. Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded."

There was no general regulation or attempted regulation of futures trading, only specific subjects were covered. *State* v. *Christopher,* 318 Mo. 225, 2 S. W. (2d) 621, 628 (1928).

In fact, Congress has expressly negatived any broad supersedure of state regulation in the general field by manifesting its intent in Section 12 to preserve state control. It is there provided:

> "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *."

Congress thus recognized the existence of state authority in this field partially covered by federal enactment, and authorized the Secretary of Agriculture to draw assistance from and lend assistance to any state authority in furtherance of the congressional purpose. As this court recently said in *United Brokerage Co.* v. *Jensen,* 322 U. S. 202, 209 (1944):

> "Where the government has provided for collaboration the courts should not find conflict."

The Board of Trade has urged and the Court of Appeals has held as a basis upon which to invalidate state legislation that:

> "* * * Congress intended and expressly provided for exclusive federal control and authority over * * * the Board of Trade." (Rec. 259.)

This holding, we submit, is erroneous and directly in conflict with this court's decision in the *Dickson* case.

The invoked state authority validly controls a specific subject matter of regulation not occupied by or repugnant to federal statutes.

The state commission has been granted authority to pass upon in the public interest rules and regulations of the Board of Trade which relate to public or private warehousing of grain, and custodian receipts covering private warehousing. The Board of Trade has from time to time passed rules dealing with warehousing rates, services and financial transactions. (Rules 1620-36, *Board of Trade* case, Tr. 155-9). These are the rules over which state regulation is sought.

The federal act refers to warehouses in only two instances, and then only warehouses that have been approved or declared "regular" as facilities from which delivery may be made on futures contracts. A futures contract may be satisfied either by an offsetting trade in the futures market or by delivery of a warehouse receipt issued by a warehouse so approved.

The references to such warehouses in the federal act are:

Section 5a(3), which requires that boards of trade require regular warehouses to make reports, keep records and permit visitation by the secretary. This requirement obviously is intended to give the secretary general information only.

Section 5a(7), requires boards of trade to declare federal licensed warehouses regular for futures deliveries, irrespective of the possession of state licenses, "without discrimination". The purpose of this section was to prevent discriminations by boards of trade against warehouses possessing only federal licenses. It gave federal warehouses the same status as far as futures deliveries are concerned as state licensed warehouses, but both fed-

eral and state houses continued to be subject to all rules and regulations of the Board of Trade and to all applicable laws as long as such rules, regulations and laws are applied "without discrimination".

These two references to warehouses do not deal with the warehouse operating features of Board of Trade rules, over which state approval is required. In addition, the following types of warehouses or warehousing functions are not remotely referred to by the Commodity Exchange Act, since the warehouses or warehousing functions are not a part of the futures delivery mechanism—the only phase of warehousing upon which the federal act touches. The Board of Trade nevertheless has adopted rules relating to such warehousing functions, and certainly there can be no question that such rules must be submitted to the Illinois commission for approval:

1. Warehousing of public grain in houses that *have not been designated as regular* for delivery of grain in satisfaction of futures contracts.

2. Custody of grain in *private* warehouses, and control of custodian receipts.

3. Warehousing of actual grain which is not used in connection with futures trade or deliveries on futures contracts.

4. The rates and practices under which actual grain is stored and handled by warehousemen.

The Commodity Exchange Act does not require any rule or regulation of the Board of Trade to be submitted to the Secretary of Agriculture for his approval, and that is the specific state regulatory function here involved. The act contains only one prohibition with respect to the contents of a board of trade rule, and that is that no rule shall forbid the return of patronage dividends to cooperative members, nor shall the Board of Trade deny member-

ship to cooperative associations. (Sections 5e, 6a(2).) The subject of cooperatives has no relationship to our instant problem. No possible conflict could occur between this federal prohibition and the state requirement that rules relating to warehousing be approved.

Section 5a(1) of the federal act does require the Board of Trade to "furnish" the secretary with copies of all rules and regulations and changes therein. These rules are required to be furnished solely for informational purposes so that the secretary may keep advised of the type of regulations existing or being proposed. But this prohibition is vastly different from the requirement under the state act that certain rules and regulations must receive the commission's approval before they may become effective. The state commission is thus authorized to exercise regulatory power in the public interest.

This federal provision could in no way conflict with the state requirement. Assume that the Board of Trade adopted a rule and submitted it to the state commission, and that it was disapproved. There would be nothing to furnish the secretary. If the rule was approved, it would be furnished the secretary and complete compliance with both statutes would result. Nor could the state require the Board of Trade to adopt a rule which might infringe upon the Board of Trade's limited federal obligations, since the state commission cannot initiate a rule, but only passes upon rules first adopted by the Board of Trade and then submitted to the commission for approval.

The federal agency has not been granted power to approve or disapprove warehousing rules adopted by the Board of Trade. This regulatory function may be exercised solely by the state. To invalidate state authority would be to eliminate completely this form of regulation.

The court could not transfer or delegate the function to the secretary. Congress has not done so.

Counsel for the Board of Trade has not urged that the secretary has power to approve its warehousing rules. The Court of Appeals, however, has erroneously held (*Board of Trade* case, Tr. 261; *Great Lakes* case, Tr. 125):

> "We therefore are of the view that Congress has invaded the precise field occupied by the Illinois commission by reason of § 194b of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The Court of Appeals misconceived and misconstrued the provisions, scope and character of the Commodity Exchange Act, and the principles of supersedure that have been announced by this court in favor of the validity of state authority in the absence of irreconcilable conflict.

DIGEST OF IMPORTANT CASES SUSTAINING STATE REGULATIONS ALTHOUGH FEDERAL CONTROL EXISTED IN THE SAME FIELD.

Food and Agricultural Products.

Reid v. *Colorado*, 187 U. S. 137 (1902)

A federal act declaring it an offense for one knowingly to transport diseased livestock from one state to another did not invalidate a state requirement that livestock imported into the state be certified as free from contagious disease, regardless of shippers' knowledge.

Savage v. *Jones*, 225 U. S. 501 (1912)

The Federal Food and Drugs Acts, prohibiting the misbranding of food products, does not supersede a state law requiring that the entire contents of the product be disclosed.

Sligh v. *Kirkwood*, 237 U. S. 52 (1915)

A state statute making it unlawful to ship in interstate commerce citrus fruits which are immature or "otherwise unfit for consumption" does not contravene the Federal Food and Drugs Act dealing with fruit which is "filthy, decomposed or putrid."

Merchants Exchange of St. Louis v. *Missouri*, 248 U. S. 365 (1919)

Comprehensive Federal Grain Standards Act relating to standards of quality and condition of grain does not supersede state law prohibiting weighing of grain shipped into and outside of the state by other than state appointed weighers.

Corn Products Refining Co. v. *Eddy et al.*, 249 U. S. 427 (1919)

A state statute adopting almost the identical language of the Food and Drugs Act, but in addition permitting the state administrative body to require manufacturers of proprietary syrups to state on the label the percentage of each ingredient, is valid, notwithstanding the federal act prohibited misbranding and required the labeling of such substances as morphine, cocaine and opium.

Carey v. *South Dakota*, 250 U. S. 118 (1919)

Federal Migratory Bird Act, placing migratory ducks within the custody and protection of the United States Government and forbidding their being destroyed or taken out of season, does not conflict with a state law prohibiting the shipment of wild ducks either within or to points outside the state.

Mintz v. *Baldwin*, 289 U. S. 346 (1933)

A certificate that cattle shipped in interstate commerce are free from Bangs disease may lawfully be required by the state of importation from state of origin, notwithstanding federal law which provided that whenever an inspector of the Bureau of Animal Industry, issues a certificate of inspection, cattle may be shipped in interstate commerce without further examination.

Dickson v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933)

State law declaring certain sales of grain for future delivery to be illegal is not superseded by the Grain Futures Act, which regulates and thus acquiesces in grain futures trading.

Hartford Indemnity Co. v. *Illinois*, 208 U. S. 155 (1936)

An Illinois statute paralleled a federal statute in licensing produce merchants. Additional state requirement of a bond was not superseded.

Pacific States Co. v. *White*, 296 U. S. 176 (1935)

Federal Standard Baskets and Containers Act, fixing the cubic contents of containers for fruits and vegetables, does not conflict with or supersede a state regulation determining the dimensions and form of a container for raspberries.

Townsend v. *Yeomans*, 301 U. S. 441 (1937)

A state statute, fixing maximum charges for handling and selling leaf tobacco by warehousemen, is not repugnant to the Tobacco Inspection Act containing comprehensive provisions over marketing and inspection of tobacco.

Parker v. *Brown*, 317 U. S. 341 (1943)

The Federal Agricultural Marketing Agreement Act permitting the Secretary of Agriculture to adopt a marketing program for raisins does not, in the absence of an order of the Secretary, forbid a similar program under state statute.

Railroads and Motor Carriers.

Atlantic Coast Line v. *Georgia*, 234 U. S. 280 (1914)

A state may require locomotive headlights of specific intensity as a safety measure, notwithstanding Congress had enacted legislation pertaining to many types of locomotive safety devices.

Missouri Pacific R. Co. v. *Norwood*, 283 U. S. 249 (1931)

The authority of the Interstate Commerce Commission over service and supply of trains does not conflict with the state's power to prescribe the number of members of a railroad train and switching crew.

Atchison Ry. v. *Railroad Comm.*, 283 U. S. 380 (1931)

Provisions in the Interstate Commerce Act for commission approval of construction of railroad terminal do not supersede state power to order and compel construction of such a terminal.

South Carolina State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177 (1938)

The Federal Motor Carrier Act does not forbid a state from regulating the weight and width of trucks using its roads in interstate commerce.

Welch Co. v. *New Hampshire*, 306 U. S. 79 (1939)

A state statute prohibiting a truck driver from being on duty in excess of twelve hours is not superseded by the Federal Motor Carriers Act of 1935, empowering the Interstate Commerce Commission to regulate the maximum number of work hours for such drivers.

Maurer v. *Hamilton*, 309 U. S. 598 (1940)

A state statute prohibiting the operation on a highway of a vehicle carrying another vehicle above the cab of the carrier does not conflict with the Federal Motor Carrier Act empowering the Interstate Commerce Commission to establish regulations as to safety of operations and equipment, and to investigate weights and sizes of vehicles, notwithstanding a finding by the commission that the type of operation prohibited by the state was not unsafe.

Terminal Assn. v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 (1943)

An Illinois Commerce Commission order requiring caboose cars for switchmen in intrastate movement of freight trains, but having the practical result of compelling such cars also in interstate commerce, is permissible and not superseded by Federal Railway Labor Act, Interstate Commerce Act, Safety Appliance Act or Boiler Inspection Act. (This case was considered, *ante*.)

Southern Pacific Co. v. *Arizona*, 325 U. S. 761 (1945)

A state statute limiting the length of interstate trains does not conflict with power in the Illinois Commerce Commission to regulate the same subject matter in an emergency.

Miscellaneous.

Minnesota ex rel Whipple v. *Martinson*, 256 U. S. 41 (1921)

A state law forbidding a physician to furnish drugs to habitual users out of stock on hand, and requiring the issuance of a prescription, was not in conflict with the Harrison Anti-Narcotics Act, which permitted physicians personally to dispense drugs to such persons at his pleasure, provided proper records were kept.

Kelly v. *Washington*, 302 U. S. 1 (1937)

Elaborate federal regulations for marine safety control, including the prescription of numerous safety devices and inspection of hulls of motor-driven vessels carrying passengers or freight for hire, or flammable or other like dangerous cargo, did not supersede state inspection of hulls of motor-driven tugs not in the categories specifically covered.

Allen-Bradley Local v. *Wisconsin Emp. R. Bd.*, 315 U. S. 740 (1942)

State labor law, declaring certain *employee* practices unfair labor practices, is not in conflict with the NLRB prescribing unfair *employer* labor practices.

Anderson National Bank v. *Luckett*, 321 U. S. 233 (1944)

National banks may be required under a state statute to turn over inactive accounts to the state, without infringing upon the provisions of the national banking laws pertaining to acceptance of deposits and doing a banking business.

Union Brokerage Co. v. *Jensen et al.*, 322 U. S. 202 (1944)

State requirement of license of foreign custom house brokers not in conflict with licensing provisions of the federal act dealing with custom house brokers.

Railway Mail Assn. v. *Corsi*, 326 U. S. 88 (1945)

An association of United States postal employees, subject to federal statutes regulating terms and conditions of employment and prohibiting discrimination because of membership in a union, is nevertheless subject to a state law prohibiting discrimination in union membership on account of race, creed or color.

CLOVERLEAF BUTTER CO. V. PATTERSON, 315 U. S. 148, distinguished.

The Circuit Court of Appeals confessedly grounded its opinion principally upon this court's decision in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, for it says (*Great Lakes* case, Tr. 112; *Board of Trade* case, Tr. 248):

> "The case on its facts and questions decided most similar to the instant one is that of *Cloverleaf Butter Co.* v. *Patternson, supra.* • • •"

We recognize that when a court of second highest authority in the land bases its decision chiefly upon a decision of this court that it deems controlling we must read that case with particularly respectful attention. We have done so.

The following considerations distinguish the *Cloverleaf* case from the instant cases in the following salient respects:

First: Although it is true that public health was involved, the *activity* subject to state and federal superintendence was the narrow one of the manufacture and production of a single food product, to-wit: renovated butter. While many steps enter into the preparation of the finished product, they comprised an integrated sequence of activities calculated to a single end, namely, the offering to the public of a single and highly specific food product.

We can incisively put the matter as follows: Here is a package of renovated butter. The federal government says that it may be sold. The state of Alabama says that it may not be sold. Both regulations cannot simultaneously be given effect.

But grain warehousing is a business of manifold aspects. The enterprise is a public utility. Its functions are myriad. Its operations are a matter of national destiny.

In the instant case the federal act is primarily designed to assure, by federal approval, the reliability of highly negotiable grain warehouse receipts. It is true that to that end it endows the Secretary of Agriculture with some measure of control over federally licensed warehouses.

But the act does not empower him to fix rates, approve financial transactions, regulate transactions with other utilities, or promulgate regulations prospective and therefore legislative in tenor, with respect to the vitally important warehouse business generally. The power of the states in such cases has been historic. It should not be nullified unless the conflict is inevitable, as was the conflict in the *Cloverleaf* case.

In the *Cloverleaf* case there was precise coincidence of subject matter—namely, the renovated butter viewed as a product fit or unfit, as the case might be, for human consumption. In the instant case there is no single, simple product which cannot be simultaneously fit and unfit but a vast industry which has always been subject, in related but very diverse phases, to the sort of authority that Illinois asserts and that is not subject to any comparable authority upon the part of the Secretary of Agriculture.

Second: With respect to the act involved in the *Cloverleaf* case, there was no history of prior explicit provision

that state authority should be unimpaired by the act. There is such a history in connection with the instant acts.

Although the Circuit Court of Appeals places reliance upon the provision inserted by the 1931 amendment of Section 29 of the Federal Warehouse Act, which provided that

> "• • • the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. • • •"

this language, particularly when read in the historical context of the act, is at least as favorable to petitioners as it is to respondent.

The Federal Warehouse Act expressly provides that the Secretary of Agriculture "is authorized to co-operate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers • • •."

Now how can the Secretary of Agriculture "co-operate with State officials charged with the enforcement of State laws relating to warehousemen" if such State laws are superseded? No such consideration was present in the *Cloverleaf* case.

This language falls far short of peremptory interdiction of all state authority over grain warehouses. The Circuit Court of Appeals has held that the Illinois Commerce Commission cannot regulate or even investigate any phase of the vast grain warehouse business. We submit that this ruling should elicit *certiorari* and result in reversal.

Conclusion.

Wherefore, it is respectfully submitted that the public interest will be promoted by the granting of this petition and the decision by this court of the question involved.

Respectfully submitted,

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APPENDIX I.

ARTICLE XIII.

WAREHOUSES.

§ 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

§ 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

§ 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

§ 4. All railroad companies and other common carriers on railroads shall weight or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

§ 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

§ 6. It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

§ 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

APPENDIX II.

Illinois Grain Warehouse Act

(Illinois Revised Statutes, 1945, Ch. 114, pars. 293-326a, pp. 2714-2718.)

STORAGE OF GRAIN.

AN ACT to provide for the storage of cereal grains, soybeans and cowpeas in State-licensed warehouses and under State supervision, and the issuance of storage certificates therefor, and providing penalties for offenses thereunder. [Approved June 30, 1927. L. 1927, p. 704, title as amended by act approved July 2, 1935. L. 1935, p. 1115.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

293. Definitions.] § 1. That wherever the word "board" shall appear in this act it shall refer to any local supervisory board of individual producers appointed by the Department of Agriculture under the provisions of this act.

The word "sealer" shall refer to any person whose duty it shall be under the provisions of this act to seal any granary, crib, bin, or other receptable for grain.

The word "certificate" shall refer to any certificate or receipt evidencing the storage of grain under the provisions of this act and any rules or regulations promulgated thereunder.

The word "owner" shall refer to and include any person or persons, (whether individuals, copartnerships or corporations) who shall either personally or as trustee have title to or the right of possession of any grain stored under the provisions of this act.

The words "grain in storage" shall refer to cereal grains, soybeans and cowpeas stored under the provisions of this act. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

294. Local supervisory boards.] § 2. Local supervisory boards consisting of not less than three (3) nor more than seven (7) members shall be appointed by the Department of Agriculture in any county or counties upon the applica-

tion of one or more citizens as hereinafter provided for the purpose of supervising grain in storage and the issuing of certificates against such grain, and generally and under the direction of the Department of Agriculture for carrying out the purposes and enforcing the provisions of this Act. A suitable name and a number shall be given to such board by the Department of Agriculture. The members of such board shall at the time of their appointment be producers of grain in the county or counties for which they are appointed and residents thereof. They shall continue in office until their successors are appointed by the Department of Agriculture. In the event of vacancies arising by reason of the resignation or upon removal from the county or counties or death of any member or members such vacancies shall be filled in manner and form as in the case of original appointments. Each board shall appoint one of its own members as its secretary. The secretary may also be the treasurer and each board shall also appoint a president and vice president from its own membership, and their duties shall be those of similar officers in their organization. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

295. Oath—Treasurer's bond.] § 3. Members of such boards shall qualify by taking oath similar to that required of public officials. The treasurer shall furnish bond conditioned for the faithful performance of his duties as treasurer, for the faithful accounting for moneys coming into his hands and for the delivery of any unexpended portions thereof to his successor in office or to such other person or persons or to such societies as may be provided by law. Such bond shall be in such amount not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00) as may be determined by the Department of Agriculture. Such bond shall be deposited with and the sureties thereon shall be approved by such Department. In case such bond is not a personal bond the premium therefor shall be paid out of the funds of the board. [As amended by act approved June 9, 1943. L. 1943, vol. 1, p. 1052.]

296. Issuance of license.] § 4. Upon the appointment and qualification of the members of such board the Department of Agriculture shall immediately issue a license to it, and prescribe the duties of its officers and the records they shall keep. Each license shall be numbered, and specify

the territory which shall be under the jurisdiction of the board and within which certificates may be issued, such certificates shall bear the names and the license number of the board. It shall also have printed thereon such other directions, rules and regulations as the Department of Agriculture shall make or promulgate and deem necessary to set forth upon such license.

297. Appointment of board.] § 5. Any person may make application to the Department of Agriculture for the appointment of a board in and for the territory in which he resides; or the Department of Agriculture may make such appointments upon its own initiative. When any such application is made the Department of Agriculture shall as soon as practicable investigate the situation and determine upon the advisability or otherwise of making the appointments requested. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

298. Local sealer.] § 6. The board shall submit to the Department of Agriculture the name of some person or persons who shall, subject to the approval of the Department of Agriculure, act as the local sealer or sealers, and every such sealer shall have the same authority with respect to the provisions of this act and the rules and regulations promulgated thereunder, and the enforcement thereof, as any officer of the peace.

299. Application for storage—Appeal from decisions of board.] § 7. The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board.

Any owner aggrieved by any ruling or decision of the board may appeal to the Department of Agriculture whose decision, subject to the judicial review thereof hereinafter provided, shall be final. As amended by act approved June 30, 1945. L. 1945, p. —, S. B. No. 139, effective Jan. 1, 1946.

Text of section until Jan. 1, 1946.

299. Application for storage—appeal from decisions of board. § 7. The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board.

Any owner aggrieved by any ruling or decision of the board may appeal to the Department of Agriculture whose decision shall be final.

300. Power and duty of sealer.] § 8. It shall be the duty of the sealer under the direction of the Department of Agriculture, to:

a. Supervise the storage of grain.

b. Ascertain the amount stored by each owner who shall desire to avail himself of the provision of this Act.

c. Determine, so far as possible, upon the basis prescribed in the rules and regulations issued hereunder, the exact grade and quality thereof.

d. Ascertain, prior to the issuance of any certificate, that the bin, crib, granary or other receptacle in which the grain is stored is satisfactory for the storage of such grain, and that such receptacle conforms to the regulations applicable thereto promulgated by the Department of Agriculture.

He shall, before delivering a certificate to the owner, ascertain that there are no other outstanding certificates upon the grain and shall securely seal the granary, crib, bin or other receptacle in which the grain so certified is stored. Thereafter the sealer may make such inspections of the granaries, cribs, bins or other receptacles so sealed, at such times and in such manner as the Department of Agriculture may determine rendering to the Department, and to the owner when requested, such reports as to the amount and condition of the grain in storage and the condition of the receptacle in which it is stored, as may be required. The sealer shall have authority at all times to enter upon any premises for the purpose of inspecting grain in storage or the granary, crib, bin or other receptacle in which it shall have been stored, and the acceptance of a certificate by the owner shall be deemed consent to entry and inspection by the sealer or any person duly authorized thereunto by the Department of Agriculture.

Seals or locks, or other fastenings employed shall be in accordance with specifications furnished by the Department of Agriculture. A warning card shall be posted in a conspicuous place near the seal on each receptacle sealed. Such card shall contain substantially the following wording:

"WARNING

Sealed by authority of the Department of Agriculture of the State of Illinois.

Any person tampering with this seal or removing any grain therefrom shall be subject to fine and imprisonment as provided by law.

Signed....., Director of Agriculture, State of Illinois." [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

301. Bond and oath of sealer.] § 9. The sealer shall furnish bond for the faithful performance of his duties in such amount not less than one thousand dollars ($1,000) as shall be determined by the Department of Agriculture. Such bonds and the sureties thereon, shall in every case be subject to the Department's approval and be deposited with it, and in case it is not a personal bond the premium thereon shall be payable out of any funds in the hands of the board. He shall also qualify by taking an oath similar to that required of public officials. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

302. Form of certificates.] § 10. Certificates shall be upon forms to be prepared by the Department of Agriculture, and every such certificate must embody within its written or printed terms:

(a) The name and license number of the board under which such certificate is issued.

(b) The consecutive number of the certificate.

(c) The date of issue of the certificate.

(d) A particular description of the granary, bin, crib, or other receptacle in which the grain is stored, and of the premises upon which it is located.

(e) A description of the grain.

(f) The name of the owner or owners, whether ownership is sole, joint, or in trust, and the conditions of such ownership, and (in the case of tenants) the date of termination of the lease.

(g) A statement of any loans or other indebtedness made to or owing by the owner which in any manner constitutes a lien, whether statutory or contractual, including both mortgage and landlord's liens, upon the grain, which statement shall be signed by the owner or his agent.

(h) A form of waiver of liens which may be signed by the lienholder.

(i) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order, and at what place it will be delivered.

(j) A facsimile signature of the Director of Agriculture and the countersignature of the sealer.

(k) If the owner is married, a waiver by the spouse of any claim of exemption and a consent to the instrument.

(l) A statement that no other certificate is outstanding covering the grain represented thereby. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

303. Owner not to be relieved from duty of reasonable care.] § 11. No term or condition shall be inserted in any certificate, whether negotiable or otherwise which shall in any manner purport to relieve the owner from exercising that degree of care in the safe keeping of the grain in storage which a reasonably prudent man would exercise with regard to similar property of his own.

304. Non-negotiable certificate.] § 12. A certificate in which it is stated that the grain stored shall be released or delivered to the owner, or to any other specified person, is a non-negotiable certificate.

305. Negotiable certificate.] § 13. A certificate in which it is stated that the grain stored will be delivered to the bearer, or to the order of any person named in such certificate, is a negotiable certificate.

No provision shall be inserted in a negotiable certificate that is non-negotiable. Such provisions, if inserted, shall be void. Provided, however that in case the owner is a tenant, the certificate shall cease to be negotiable from and after the date of the termination of the lease as it appears thereon.

306. Issuance of certificate.] § 14. The sealer shall issue to the owner one or more certificates as herein provided, but the aggregate amount of the grain represented by such certificate or certificates shall in no event exceed the amount of grain stored and sealed by the sealer, and each such certificate shall cover a separate granary, crib, bin or receptacle. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

307. Duplicate of certificates to be filed.] § 15. All certificates issued hereunder shall be issued in triplicate or in case the Department of Agriculture shall so direct, in

quadruplicate. All such copies except the original shall be marked "Duplicate—No Value". The sealer shall file with the Secretary of the board one duplicate of all certificates delivered by him, and the secretary shall keep an accurate record thereof in a book provided by the Department of Agriculture for the purpose. In case the Department shall so direct, the sealer shall also file one duplicate of all certificates delivered by him with the Department for the Department's records. The original and one duplicate copy shall be delivered to the owner. The owner may file this duplicate copy in the office of the Recorder of Deeds or he may retain the same and when he negotiates the original certificate, may at the same time deliver to the assignee the duplicate copy. In case the owner has filed the duplicate with the Recorder, he shall deliver the Recorder's receipt for the duplicate to the assignee at the time he negotiates the original certificate. In case the duplicate copy is delivered to the assignee, the assignee may file such duplicate copy in the office of the Recorder of Deeds for the county in which the grain is located and such duplicate shall remain in the custody of the Recorder except as hereinafter provided.

When a duplicate is presented to the Recorder carrying the endorsement "This instrument to be filed but not recorded," the Recorder shall file the same in his office and shall index the same in the chattel mortgage index or other suitable index and shall show the date of the certificate, the number thereof, to whom it was issued and the kind, quantity and location of the grain covered thereby. He shall collect a fee of twenty-five cents (25¢) for filing and indexing each such duplicate certificate. The filing and indexing of such certificate shall impart the same notice as the filing and indexing of a chattel mortgage.

When the owner or holder of a certificate makes written assignment thereof, the Recorder shall on request of the assignee enter a copy of such assignment upon the duplicate certificate filed in his office and shall enter upon the index book the date of the assignment and the names of the assignor and assignee. The Recorder shall collect a fee of twenty-five cents (25¢) for each assignment entered. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

308. § 16. Repealed L. 1931—32, First Sp. Sess., p. 64.

308a. Cancellation of certificate.] § 16a. The owner may secure the cancellation of a certificate by delivering the original thereof to the board by which it was issued with the request that it be cancelled. The board shall stamp the word "Cancelled" together with the date of such cancellation upon such original certificate and also upon the duplicate thereof in its files. The board shall retain the original certificate so cancelled. Upon notice in writing from the board issuing the original certificate to the effect that it has been cancelled, the Recorder of Deeds shall release the duplicate thereof filed of record in his office without charge. In case a copy of such certificate has been filed with the Department of Agriculture, the board shall also notify such Department of the cancellation of such certificate. [Added by act approved July 2, 1935. L. 1935, p. 1115.]

309. Board may act as trustee of certificates.] § 17. Whenever it shall appear that the interests of holders of certificates and other parties interested may be further conserved thereby the Department of Agriculture may authorize the board to act as trustee for such certificates as may be assigned to it in that capacity and the board may then exercise all the rights of an owner, subject to the duties and responsibilities imposed and devolving upon trustees under similar conditions. All certificates issued by the board as trustee shall have that fact plainly set forth thereon, any other provision of this act to the contrary, notwithstanding, but such statement shall in no manner affect the negotiability or non-negotiability of such certificate.

310. Non-negotiable certificate labelled as such.] § 18. A non-negotiable certificate shall have plainly printed or written upon is face, "Non-negotiable" or "Not Negotiable."

311. Delivery of grain.] § 19. The owner shall, in the absence of some lawful excuse provided by this act, deliver the grain stored upon demand made by the holder of a certificate for the grain, or for such part thereof as is represented by the certificate if such demand is accompanied by:

(a) A showing that all such liens as may appear upon the certificate and which shall subsist upon the date of the demand have been satisfied

(b) An offer to surrender the certificate if negotiable, with such endorsements as would be necessary for the negotiation of certificate, and,

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the owner.

In case the owner refuses or fails to deliver the goods in compliance with a demand by the holder of a certificate so accompanied, the burden shall be upon the owner to establish the existence of a lawful excuse for such refusal.

312. Pooling of grain in storage by owners.] § 20. Owners may, for the purpose of pooling their grain and affording a higher degree of security, organize themselves into groups of two or more owners of grain in storage, all of whom shall be jointly and severally liable to holders of certificates in due course to the extent of seventy-five per cent of the market price of the grain represented by certificates issued against it, and at the time of their sale, pledge, assignment or other lawful disposition, and all the grain in storage and belonging to said pool shall be liable for the payment of moneys advanced against, or paid for such certificates.

313. Group certificates.] § 21. Certificates issued to or on behalf of the members of such groups shall have printed thereon the words "Group Certificates". They shall embody the same terms as are required in the case of other certificates issued under the provisions of this act insofar as they are applicable, and in addition thereto, shall have stated thereon the total amount of grain belonging to the pool and the names of the members constituting the group.

All group certificates shall be negotiable, and any provision thereon contrary thereto or inconsistent therewith or in any manner purporting to relieve the members of the group of their liability or any part thereof, as provided in the immediately preceding section, shall be void. [As added by act approved July 2, 1935. L. 1935, p. 1115.]

314. Application to organize group.] § 22. When any owners desire to organize themselves into a group for the purposes described in the two immediately preceding sections, they shall notify the secretary of the board upon forms provided for that purpose. The secretary shall transmit a duplicate of such application to the Department

of Agriculture. Unless, for good cause shown, the Department of Agriculture shall expressly disapprove of the organization of such group or groups and the functioning thereof, certificates may be issued to or on behalf of said group or groups as provided herein. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

315. Sealing, etc., applies to group certificates.] § 23. "Group Certificates" shall be issued by the local sealers as in case of individual certificates and all provisions of this act with respect to inspection, sealing and supervision of grain storage shall apply to the members of groups and the certificates issued for them. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

316. Department of Agriculture to supervise administration of act.] § 24. Te Department of Agriculture shall have general supervision of the administration of the provisions of this act and shall make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable effectually to carry out the purposes here of. It shall make such reasonable regulations with respect to the construction and maintenance of granaries, cribs, bins or other receptacles as may be necessary to protect the grain to be stored therein under the provisions of this act. It shall prepare and have printed under the same conditions as other state printing the necessary blanks, forms and other printed matter and shall make such charges to persons desiring such printed matter as shall meet the cost of production thereof. Such department may preseribe the forms of account to be kept by the several local supervisory boards and may, from time to time, require an audit of such account. The cost of any such audit shall be paid from the funds of the board whose accounts are audited. One copy of the report of such audit shall be filed with the Secretary of the board involved and one copy shall be filed with the Department. Each of such copies shall be open to public inspection during office hours. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

317. Complaints to be made to department—Hearing.] § 25. If any person shall feel aggrieved by any action of the board or of the sealer or any other official, he may submit his complaint in writing to the Department of Agriculture and the Director of Agriculture shall, as soon there-

after as possible, set the matter down for hearing before himself or one of the officers or employees of the Department at such place as shall be desirable and proper, having regard to the character of the controversy and the locality of the grain and residence of the parties involved. Likewise, the board may present to the Department of Agriculture any proper complaint against any owner and the procedure shall be as nearly as practicable the same as that in the case of charges filed by owners.

318. Orders of department—may suspend board's license.] § 26. The Department of Agriculture shall upon final hearing, make and enter such orders as it shall deem proper for the correction of improper practices, and may suspend the licenses of the board offending until such orders are obeyed. But such suspension shall in no manner relieve the board or the owners of any liability previously incurred under the provisions of this act. The costs and expense of such hearing shall be defrayed by the parties thereto, and shall be apportioned by the Department of Agriculture in such manner as it shall deem just and equitable.

319. Expenses of supervision—Fee paid by owner.] § 27. For the purpose of defraying the expenses of supervision, the owner shall pay to the board at the time of sealing, an amount which shall not exceed one cent per bushel of grain inspected and sealed by the sealer. Out of the fund thus created the compensation of the sealer, as fixed by the board, subject to the approval of the Department of Agriculture, and all other expenses, shall be paid. No compensation shall be paid to members of the board except by the express authorization and approval of the Department of Agriculture, and then only in case such payments may be made without overdrawing upon or unduly depleting the funds in the hands of the board. In the exercise of his powers and functions as an officer of the peace in connection with the provisions of this act, the sealer shall be entitled to the same fees as are provided by law for the performance of similar duties.

The board, subject to the approval of the Department of Agriculture, may direct the treasurer to pay any or all surplus moneys in his hands to any one or more agricultural societies designated by the board. As amended by act approved June 9, 1943. L. 1943, vol. 1, p. 1052.

320. Fee payable to Department of Agriculture.] § 28. The Department of Agriculture shall receive the following fees for services rendered under the provisions of this act:

For issuing licenses in each case, three dollars ($3.00).

For approving applications for group organizations, one dollar ($1.00).

All moneys received by the Department of Agriculture from fees and other sources in connection with the administration of the provisions of this act shall be paid into the State treasury.

321. Interfering with grain stored.] § 29. Any person unlawfully removing, breaking or in any manner interfering or tampering with any seal, lock or other fastening placed upon any granary, crib, bin or other receptable for grain under the provisions of this act, except when such removal shall be rendered imperative to prevent the damage, loss or destruction of grain stored therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

322. Fraudulent issuance of certificate.] § 30. An owner, the agent or servant of an owner, or any member of any board, or any sealer, who fraudulently issues or aids in fraudulently issuing a certificate for grain, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars, or both.

323. Issuance of duplicate certificate.] § 31. An owner, or any officer, agent or servant of any owner, who issues or aids in issuing a duplicate or additional negotiable certificate for grain, knowing that a former negotiable certificate for the same grain, or any part of it, is outstanding and uncanceled, wihout plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed certificate after proceedings as provided for in section 14[1] of "An Act in regard to warehouse receipts" approved May 29, 1907, shall upon conviction be punished for each

[1]Chapter 110, §§ 264-279.

offense by imprisonment in the penitentiary not exceeding two years, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

324. Delivery of grain with certificate outstanding.] § 32. An owner, or any officer, agent or servant of an owner, who delivers grain out of the possession of such owner, knowing that a negotiable certificate, the negotiating of which would transfer the right to the possession of such grain, is outstanding and uncancelled, without obtaining the possession of such certificate at or before the time of such delivery, shall, except when ordered by the court, as hereinbefore provided, be found guilty of a misdemeanor, and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine.

325. Transfer or mortgage of grain after issuing certificate.] § 33. Any owner who shall, after the issuance of a certificate for grain in storage, take, sell, mortgage, pledge, hypothecate or otherwise incumber, or attempt to take, sell, mortgage, pledge or otherwise incumber the said grain, or who shall take or remove it from the receptacle where standing, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

326. Application of Warehouse Receipts Act.] § 34. All the provisions of Section 9 to 48,[1] inclusive, of "An Act in regard to warehouse receipts," approved May 29, 1907, relative to the negotiation, transfer, sale or endorsement of warehouse receipts shall so far as possible, apply to the negotiation, transfer, sale or endorsement of the certificates provided for herein.

Where the word "owner" is used in this act it shall be construed to be used in the same connection as the word "warehouseman" as used in the uniform warehouse receipts act, and where the word "certificate" is used in this act, it shall be construed to be used in the same connection as the word "receipt" is used in "An Act in regard to

warehouse receipts," approved May 29, 1907. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

326a. Judicial review of administrative decisions.] § 35. The provisions of the "Administrative Review Act", enacted by the 64th General Assembly,[1] and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department of Agriculture hereunder. The term "administrative decision is defined as in Section 1 of said "Administrative Review Act".[2]

Added by act approved June 30, 1945. L. 1945, p. —, S. B. No. 139, effective Jan. 1, 1946.

[2]Chapter 110, § 264.

APPENDIX III.

Illinois Warehouse Receipts Act.

AN ACT in regard to warehouse receipts, approved May 29, 1907, in force July 1, 1907.

ARTICLE I.

THE ISSUE OF WAREHOUSE RECEIPTS.

233. ISSUED BY WAREHOUSEMEN.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Warehouse receipts may be issued by any warehouseman.

234. REQUIREMENTS OF.] § 2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored.

(b) The date of issue of the receipt.

(c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been

made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of the terms herein required.

235. TERMS AND CONDITIONS.] § 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions: *Provided*, that such terms and conditions shall not

(a) Be contrary to the provisions of this Act.

(b) In any wise impair his obligation to exercise that degree of care in the safe keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

236. NON-NEGOTIABLE—WHEN.] § 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

237. NEGOTIABLE—WHEN.] § 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

238. DUPLICATE RECEIPTS.] § 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be the original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

239. NON-NEGOTIABLE RECEIPT TO BE SO MARKED.] § 7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "Not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

ARTICLE II.

OBLIGATIONS AND RIGHTS OF WAREHOUSEMAN UPON THEIR RECEIPTS.

240. OBLIGATIONS ON DEMAND.] § 8. A warehouseman in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt properly endorsed.

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

241. JUSTIFIED IN DELIVERING GOODS—WHEN.] § 9. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him on order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

242. WHEN LIABLE FOR CONVERSION, ETC.] § 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouse-

man shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

243. FAILURE TO TAKE UP RECEIPT ON DELIVERY.] § 11. Except as provided in section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

244. DUTY ON DELIVERY OF PART.] § 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

245. ALTERATION OF A RECEIPT.] § 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraud-

ulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

246. RECEIPT LOST OR DESTROYED—PROCEEDINGS.] § 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

247. "DUPLICATE" RECEIPT—EFFECT OF.] § 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability.

248. WHEN WAREHOUSEMAN EXCUSED FROM LIABILITY.] § 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the

warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

249. WHEN SEVERAL CLAIM TITLE.] § 17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

250. WHEN CLAIMS ARE ADVERSE.] § 18. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

251. TITLE OF THIRD PERSON AS DEFENSE.] § 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

252. LIABILITY ON ACCOUNT OF NON-EXISTENCE OF GOODS, ETC.] § 20. A warehouseman shall be liable to the holder of a receipt for damages caused by non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statement, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

253. LIABILITY FOR ANY LOSS OR INJURY.] § 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to

them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

254. SHALL KEEP GOODS SEPARATE.] § 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

255. AUTHORITY TO MINGLE FUNGIBLE GOODS.] § 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

256. LIABLE FOR DELIVERY OF SEVERAL SHARES.] § 24. The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had be [been] kept separate.

257. CANNOT BE ATTACHED, UNLESS RECEIPT IS SURRENDERED TO WAREHOUSEMAN.] § 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

258. ATTACHMENT OF RECEIPT.] § 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law

or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

259. LIEN OF WAREHOUSEMAN—FOR CHARGES, ETC.] § 27. Subject to the provisions of section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

260. HOW LIEN ENFORCED.] § 28. Subject to the provisions of section 30, a warehouseman's lien may be enforced—

(a) Against all goods whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

261. HOW LIEN LOST.] § 29. A warehouseman loses his lien upon the goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

262. NEGOTIABLE RECEIPT—CHARGES—LIEN.] § 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

263. MAY REFUSE TO DELIVER, UNTIL LIEN IS SATISFIED.] § 31. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

264. WAREHOUSEMAN HAS OTHER REMEDIES.] § 32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

265. HOW LIEN SATISFIED.] § 33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place. In accordance with the terms of a notice so given a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the warehouse where the lien was acquired, or at the election of said warehouseman at any public auction room or place in the county where such warehouseman is located.

After the time for the payment of the claims specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sales the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

266. PERISHABLE GOODS.] § 34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reason-

able effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

267. REMEDY DOES NOT PRECLUDE OTHERS.] § 35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

268. LIABILITY ENDS WHEN GOODS SOLD TO SATISFY LIEN.] § 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods or to a holder of the receipt, given for the goods when they were deposited, even if such receipt is negotiable.

ARTICLE III.

NEGOTIATION AND TRANSFER OF RECEIPTS.

269. NEGOTIATED BY DELIVERY.] § 37. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or subsequent indorsee of the receipt has endorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are delivered to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

270. BY ENDORSEMENT.] § 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a

specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

271. NON-NEGOTIABLE RECEIPT—TRANSFER.] § 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the endorsement of such a receipt, gives the transferee no additional right.

272. NEGOTIABLE RECEIPT—WHO MAY NEGOTIATE.] § 40. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

273. RIGHTS ACQUIRED WHEN RECEIPT NEGOTIATED.] § 41. A person to whom a negotiable receipt has been duly negotiated requires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

274. WHERE TRANSFERRED ONLY, WHAT RIGHTS ACQUIRED.] § 42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the receipt is non-negotiable such person also acquires the right to notify the warehouseman in writing of the transfer to him of such receipt, and there-

by to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the written notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by notification in writing to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

275. TRANSFEREE MAY COMPEL INDORSEMENT—EFFECT.] § 43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires the right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

276. WARRANTIES OF NEGOTIATOR.] § 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine.

(b) That he has a legal right to negotiate or transfer it.

(c) That he had knowledge of no fact which would impair the validity of worth of the receipt, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

277. INDORSER IS NOT LIABLE FOR PRIOR OBLIGATIONS.] § 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

278. PLEDGEE NOT WARRANTOR.] § 46. A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft

drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

279. WHEN VALIDITY IS NOT IMPAIRED BY UNAUTHORIZED NEGOTIATION.] § 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

280. POSSESSION OF RECEIPT VALIDATES A SUBSEQUENT TRANSFER.] § 48. Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

281. STOPPAGE IN TRANSITU—RIGHT OF.] § 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

ARTICLE IV.

CRIMINAL OFFENSES.

282. GOODS NOT ACTUALLY RECEIVED—RECEIPT FOR.] § 50. A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

283. FALSE STATEMENT IN RECEIPT.] § 51. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

284. DUPLICATE RECEIPT NOT SO MARKED.] § 52. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

285. GOODS HELD JOINTLY, ETC.—ISSUING RECEIPT WITHOUT STATING SUCH OWNERSHIP.] § 53. Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants, who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon con-

viction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

286. DELIVERING GOODS WITH A NEGOTIABLE RECEIPT OUTSTANDING.] § 54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

287. TAKING NEGOTIABLE RECEIPT WITHOUT HAVING TITLE TO GOODS.] § 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

ARTICLE V.

INTERPRETATION.

288. RULES.] § 56. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

289. CONSTRUCTION OF ACT.] § 57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

290. DEFINITIONS.] § 58. (1) In this act, unless the context or subject matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature, or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

291. WHEN ACT DOES NOT APPLY.] § 59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

292. REPEAL.] § 60. All acts of parts of acts inconsistent with this act are hereby repealed: *Provided, however*, that nothing in this act shall be construed to repeal any of the provisions of an act entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain and to give effect to article thirteen of the Constitution of this state" (approved April 25, 1871, in force July 1, 1871),[1] except in so far as said last named act re-

[1] Sec. 189 *et seq.* of this chapter.

lates to warehouse receipts for property stored in public warehouses of Class C, or to repeal the provisions of an act entitled, "An Act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B in the State of Illinois, and providing penalties for violation thereof" (approved May 11, 1901, in force July 1, 1901).[2]

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[2] Sec. 215 *et seq.* of this chapter.

APPENDIX IV.

Commodity Exchange Act.

Sections dealing with boards of trade.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose: *Provided,* That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Secretary of Agriculture.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the

parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period of the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 5a. Each contract market shall—

(1) promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) allow inspection at all times by any authorized representative of the United States Department of Agriculture or United States Department of Justice of the books, records, and all minutes and journals of proceedings of such contract market, its governing board and all committees, and of all subsidiaries and affiliates of such contract market, which books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct;

(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the United States Department of Agriculture or United States Department of Justice;

(4) when so directed by order of the Secretary of Agriculture, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, he shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as he finds will prevent or tend to prevent such "squeezes" and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract

to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, he shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as he finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated; and

(7) require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes.

SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary

of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the

evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further,* That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

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SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership

and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the circuit court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a "contract market" may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more

than $10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such order continues shall be deemed a separate offense.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

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SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.